REMARKS

Restriction Requirement Under 35 U.S.C. §§121 and 372

In the October 30, 2009 Office Action, the Examiner alleged that the subject application contains inventions that are not linked so as to form a single general inventive concept under PCT Rule 13.1. The Examiner required election of one of the following allegedly patentably distinct inventions:

I. Group I, claims 1-16, 26, 45-47 drawn to process of making compounds; and

II. Group II, claims 17, 18, drawn to compounds/compositions.

The Examiner alleged that Groups I and II do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, Groups I and II lack the same or corresponding special technical features for the reason that common technical feature present in both groups, i.e. Gingkolide compounds, is not a contribution over the prior art, citing Cezaux et al (UK Patent GB 2,288,559).

In response, applicants elect, with traverse, Group I, claims 1-16, 26, and 45-47, drawn to process of making compounds. Applicants note that the special technical feature of the claims of Group I is a purified fraction containing the terpene trilactones GA and GB. This special technical feature is the contribution of the process claimed in Group I, and is shared by the claims of Group II, drawn to compositions. Cezaux et al (UK Patent GB 2,288,559) does not disclose or

teach the special technical feature of the purified fraction containing the terpene trilactones GA and GB.

Applicants respectfully disagree with the Examiner's assertion of restrictable subject matter set forth in the October 30, 2009 Office Action. Under 35 U.S.C. §121, restriction may be required if two or more "independent and distinct" inventions are claimed in one application.

Applicants maintain that the inventions of Groups I and II are not independent. Under M.P.E.P. §802.01, "independent" means there is no disclosed relationship between the subject matter claimed. As disclosed in the instant specification, the claimed compositions comprising terpene trilactones GA and GB are involved in the claimed process of making. Accordingly, applicants maintain that Groups I and II are not independent and restriction is not proper.

Furthermore, under M.P.E.P. §803, the Examiner must examine the application on the merits if examination can be made without serious burden, even if the application would include claims to distinct inventions. That is, there are two criteria for a proper requirement for restriction: (1) the invention must be independent or distinct, and (2) there must be a serious burden on the Examiner if restriction were not required.

Applicants maintain that a search of the claims of Group I will identify art related to the subject matter of Group II. Therefore, at the least, there is no burden on the Examiner to examine Groups I and II together in the subject application, and applicants maintain that the Examiner must examine the

pending claims on the merits.

In view of the foregoing, applicants maintain that claims 1-18, 26, and 45-47 define a single inventive concept. Accordingly, applicants respectfully request that the Examiner reconsider and withdraw the restriction requirement and examine claims 1-18, 26, and 45-47 on the merits.

If a telephone interview would be of assistance in advancing prosecution of the subject application, applicants' undersigned attorneys invite the Examiner to telephone him at the number provided below.

No fee, other than the enclosed $65.00 fee for a one-month extension of time, is deemed necessary in connection with the filing of this Communication. However, if a fee is required, authorization is hereby given to charge the amount of any such fee to Deposit Account No. 03-3125.

Respectfully submitted,

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